

**ASSEMBLY BILL**

**No. 597**

**Introduced by Assembly Member Montanez**

February 17, 2005

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An act to amend Section 25395.96 of the Health and Safety Code, and to amend Section 13328.14 of the Water Code, relating to response actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 597, as introduced, Montanez. Response actions: brownfield sites.

(1) Existing law, the California Land Reuse and Revitalization Act of 2004, provides that an innocent landowner, a bona fide purchaser, or a contiguous property owner, as defined, qualifies for immunity from liability for response costs or damage claims with regard to a site in an urban infill area, if the innocent purchaser, bona fide purchaser, or contiguous property owner meets specified conditions. The act defines the term "agency" as meaning the Department of Toxic Substances Control, the State Water Resources Control Board, or a California regional water quality control board.

The act requires a bona fide purchaser, innocent landowner, or contiguous property owner who seeks to qualify for the immunity provided by the act to enter into an agreement with an agency, including the performance of a site assessment, and if the agency determines that a response plan is necessary, the preparation and implementation of a response plan. Existing law requires the response plan to include an opportunity for the public, other agencies, and the host jurisdiction to participate in decisions regarding the response action, and requires the regional board, if the regional board is the

agency, to provide access to the proposed response plan and site assessment at the regional board for public review.

This bill would revise the public participation procedures that are required to be included in the response plan, including requiring the agency to notify all other appropriate governmental entities and local agencies, including, but not limited to, the department, a regional board, or redevelopment agency, that is not party to the response plan regarding the proposed response action. The bill would require the regional board to provide reasonable public notice in English and other languages commonly spoken in the area, if appropriate, for public review and comment. The bill would also require the regional board to hold a public meeting in the area to receive comments if a public meeting is requested. The bill would require the regional board to consider and respond to all comments prior to acting on the response plan and to consider the use of factsheets, electronic copies of the response plan and site assessment, public notices, and additional public meetings or workshops.

The bill would also require the agency to evaluate and respond to all relevant comments to determine if the response plan is appropriate, proper, and adequate, and to consider the issue of environmental justice for communities most impacted, including low-income and racial minority populations.

(2) Existing law, the Porter-Cologne Water Quality Control Act, requires a regional board to give due notice of any hearing relating to investigating the quality of the waters of the state, prescribing waste discharge requirements, issuing cease and desist orders, requiring the cleanup or abatement of waste, or imposing administrative civil liabilities or penalties.

This bill would require the regional board, if a response action is being taken at a site, as defined, to also take specified actions when conducting the hearing or investigation, including providing notice of the major decisions and proposed or planned activities at the site, providing public access to the proposed site response plans and site assessment documents, providing 30 days to comment on proposed response plans and conducting a public meeting in the vicinity of the site during the public comment period as specified. The bill would require the regional board to consider the use of factsheets, electronic copies of the response plan and site assessment, direct communication with interested parties, and additional public meetings or workshops, as specified, and to coordinate and integrate its public participation

activities with those undertaken by the host jurisdiction and other public entities.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 25395.96 of the Health and Safety Code  
2 is amended to read:

3 25395.96. (a) If, upon review of the site assessment prepared  
4 pursuant to this article, the agency determines that a response  
5 action is necessary to prevent or eliminate an unreasonable risk,  
6 the bona fide purchaser, innocent landowner, or contiguous  
7 property owner shall submit a response plan to the agency to  
8 conduct a response action at the site, in conformance with the  
9 agreement entered into pursuant to Section 25395.92. The  
10 response plan shall include all of the following:

11 (1) (A) An opportunity for the public, other agencies, and the  
12 host jurisdiction to participate in decisions regarding the response  
13 action, taking into consideration of the nature of the community  
14 interest. *The agency shall notify all other appropriate*  
15 *governmental entities and local agencies, including, but not*  
16 *limited to, the department, the regional board, or a*  
17 *redevelopment agency, that is not a party to the response plan*  
18 *regarding the proposed response action. The agency shall place*  
19 *a notice of the proposed response plan in the California*  
20 *Regulatory Notice Register, which shall require all comments be*  
21 *forwarded simultaneously to the bona fide purchaser and to the*  
22 *agency.*

23 (B) If a regional board is the agency, the regional board shall  
24 provide *reasonable public notice in English and other languages*  
25 *commonly spoken in the area, if appropriate, access to the*  
26 *proposed response plan and site assessment at the regional board*  
27 *and local repositories, and reasonable opportunity for public*  
28 *review, ~~conduct a public hearing with 30 days prior notice, and~~*  
29 *comment. The regional board shall hold a public meeting in the*  
30 *area to receive comments if a public meeting is requested. The*  
31 *regional board shall provide notice on the agenda of the public*  
32 *hearing, and take action on the response plan in a regularly*  
33 *scheduled regional board meeting. The regional board shall*

1 *consider and respond to all comments before acting on the*  
2 *response plan. Depending on the level of community interest, the*  
3 *regional board may also consider the use of factsheets,*  
4 *electronic copies of the response plan and site assessment, public*  
5 *notices, and additional public meetings or workshops.*

6 (C) If the department is the agency, the methods for public  
7 participation proposed in the response plan shall include  
8 reasonable public notice in English and other languages  
9 commonly spoken in the area, access to the proposed response  
10 plan and site assessment at the agency and local repositories and  
11 reasonable opportunity to comment. The department shall hold a  
12 public meeting in the area to receive comments if a public  
13 meeting is requested. The department shall consider *and respond*  
14 *to* any comments received prior to acting on the response plan.  
15 Methods for public participation may also include, but are not  
16 limited to, the use of factsheets, public notices, direct notification  
17 of interested parties, *electronic copies of the response plan and*  
18 *site assessment*, public meetings, and an opportunity to comment  
19 on the proposed response plan prior to approval.

20 (D) *The agency shall evaluate and respond to all relevant*  
21 *comments received pursuant to subparagraph (A), (B), or (C) to*  
22 *determine if the response plan is appropriate, proper, adequate*  
23 *and in compliance with this chapter and either Chapter 6.8*  
24 *(commencing with Section 25300) of this code, or Division 7*  
25 *(commencing with Section 13000) of the Water Code. The agency*  
26 *shall also consider the issue of environmental justice for*  
27 *communities most impacted, including low-income and racial*  
28 *minority populations. For purposes of this subparagraph,*  
29 *“environmental justice” has the same meaning as defined in*  
30 *subdivision (e) of Section 65040.12 of the Government Code.*

31 (E) To the extent possible, the agency shall coordinate its  
32 public participation activities with those undertaken by the host  
33 jurisdiction and other agencies associated with the development  
34 of the property, to avoid duplication to the extent feasible.

35 ~~(E)~~

36 (F) It is the intent of the Legislature that the public  
37 participation process established pursuant to this subdivision  
38 ensures full and robust participation of a community affected by  
39 this chapter.

1 (2) Identification of the release or threatened release that is the  
2 subject of the response plan and documentation that the plan is  
3 based on an adequate characterization of the site.

4 (3) An identification of the response plan objectives and the  
5 proposed remedy, and an identification of the reasonably  
6 anticipated future land uses of the site and of the current and  
7 projected land use and zoning designations. This identification  
8 shall include confirmation by the host jurisdiction that the  
9 anticipated future land uses and current and projected land uses  
10 and zoning designations are accurate.

11 (4) A description of activities that will be implemented to  
12 control any endangerment that may occur during the response  
13 action at the site.

14 (5) A description of any land use control that is part of the  
15 response action.

16 (6) A description of wastes other than hazardous materials at  
17 the site and how they will be managed in conjunction with the  
18 response action.

19 (7) Provisions for the removal of containment or storage  
20 vessels and other sources of contamination, including soils and  
21 free product, that cause an unreasonable risk.

22 (8) Provisions for the agency to require further response  
23 actions based on the discovery of hazardous materials that pose  
24 an unreasonable risk to human health and safety or the  
25 environment that are discovered during the course of the  
26 response action or subsequent development of the site.

27 (9) Any other information that the agency determines is  
28 necessary.

29 (b) The agency shall evaluate the adequacy of the plan  
30 submitted pursuant to subdivision (a) and shall approve the plan  
31 if the agency makes all of the following findings:

32 (1) The plan contains the information required by subdivision  
33 (a).

34 (2) When implemented, the plan will place the site in  
35 condition that allows it to be used for its reasonably anticipated  
36 future land use without unreasonable risk to human health and  
37 safety and the environment.

38 (3) The plan addresses any public comments.

1 (4) If applicable, the plan provides for long-term operation and  
2 maintenance, including land use and engineering controls, that  
3 are part of the remedy contained in the response plan.

4 (c) (1) On or before 60 days after the date an agency receives  
5 a response plan, the agency shall make a written determination  
6 that proper completion of the response plan constitutes  
7 “appropriate care” for purposes of subdivision (a) of Section  
8 25395.67.

9 (2) Upon approval of the response plan by the agency, the  
10 agency shall notify all appropriate persons, including the host  
11 jurisdiction.

12 (d) If the use of the property changes, after a response plan is  
13 approved, to a use that requires a higher level of protection, the  
14 agency may require the preparation and implementation of a new  
15 response plan pursuant to this article.

16 (e) The owner of a site shall not make any change in use of a  
17 site inconsistent with any land use control recorded for the site,  
18 unless the change is approved by the agency in accordance with  
19 subdivision (f) of Section 25395.99.

20 SEC. 2. Section 13228.14 of the Water Code is amended to  
21 read:

22 13228.14. (a) Any hearing or investigation by a regional  
23 board relating to investigating the quality of waters of the state,  
24 prescribing waste discharge requirements, issuing cease and  
25 desist orders, requiring the cleanup or abatement of waste, or  
26 imposing administrative civil liabilities or penalties may be  
27 conducted by a panel of three or more members of the regional  
28 board, but any final action in the matter shall be taken by the  
29 regional board. Due notice of any hearing shall be given to all  
30 affected persons. After a hearing, the panel shall report its  
31 proposed decision and order to the regional board and shall  
32 supply a copy to all parties who appeared at the hearing and  
33 requested a copy.

34 (b) No party who appears before the panel is precluded from  
35 appearing before the regional board at any subsequent hearing  
36 relating to the matter. Members of the panel are not disqualified  
37 from sitting as members of the regional board in deciding the  
38 matter.

39 (c) The regional board, after making an independent review of  
40 the record and taking additional evidence as may be necessary,

1 may adopt, with or without revision, or reject, the proposed  
2 decision and order of the panel.

3 *(d) (1) If a response action is being taken at a site, the*  
4 *regional board shall also take all of the following actions when*  
5 *conducting a hearing or investigation pursuant to subdivision*  
6 *(a):*

7 *(A) Provide public notification of the major regional board*  
8 *decisions and the proposed or planned activity regarding the*  
9 *site, including providing notification in languages other than*  
10 *English, if appropriate.*

11 *(B) Provide public access to proposed response plans and site*  
12 *assessment documents at the regional board and at the local*  
13 *repository.*

14 *(C) Provide 30 days to comment on proposed response plans*  
15 *regarding the site. The regional board shall consider and*  
16 *respond to all comments received prior to taking final action on*  
17 *any response plan.*

18 *(D) Conduct a public meeting in the vicinity of the site during*  
19 *the public comment period if one is requested, if there is*  
20 *significant public interest, or if one is specifically mandated by*  
21 *statute.*

22 *(E) Depending on the level of community interest, consider the*  
23 *use of factsheets, electronic copies of the response plan and site*  
24 *assessment, direct communication with interested parties, and*  
25 *additional public meetings or workshops.*

26 *(F) To the extent possible, coordinate and integrate regional*  
27 *board public participation activities with those undertaken by the*  
28 *host jurisdiction and all other public entities associated with the*  
29 *development, investigation, or response action at the site, to*  
30 *avoid duplication to the extent feasible, and to acknowledge the*  
31 *public participation capabilities and procedures of local*  
32 *government.*

33 *(2) For purposes of this subdivision, the following definitions*  
34 *shall apply:*

35 *(A) "Response action" has the same meaning as defined in*  
36 *Section 25323.3 of the Health and Safety Code.*

37 *(B) "Site" has the same meaning as defined in Section*  
38 *25397.79.2 of the Health and Safety Code.*

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